

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**WHITNEY NATIONAL BANK,**

**PLAINTIFF,**

**vs.**

**HIGHWAY SOLUTIONS, LLC;  
MICHAEL C. MARCATO and  
ANNE S. MARCATO,**

**DEFENDANTS.**

**CASE No. 2:07-CV-415- ID**

**UNOPPOSED**

**PLAINTIFF WHITNEY NATIONAL BANK’S RESPONSE TO ORDER  
TO SHOW CAUSE [Doc. 8] WHY MOTION TO DISMISS OR QUASH  
SERVICE [Doc. 6] SHOULD BE DENIED**

Comes now Whitney National Bank (hereinafter “Whitney Bank”) and, as ordered by this Court [Doc. 8], provides the following reasons the Motion to Dismiss, or, Alternatively, to Quash Purported Service on Defendant Highway Solutions, LLC, [Doc. 6] is due to be denied as moot:

1. Defendant Highway Solutions, LLC, (“Highway Solutions”) contends in its motion that the Court should quash the purported service of process, or, in the alternative, to dismiss this action against it for insufficient service of process.
2. Since the filing of its motion, Highway Solutions’ legal counsel, J. David Martin, has agreed to accept service of process on behalf of his client.

3. Accordingly, Whitney Bank has properly executed service of process upon Highway Solutions in care of its legal counsel. *See* Executed Summons attached hereto as Exhibit A.
4. Defendant Highway Solutions does not oppose this motion.

WHEREFORE, Plaintiff Whitney National Bank respectfully requests that this Court deny as moot Doc. 6 [Motion to Dismiss, or, Alternatively, to Quash Purported Service on Defendant Highway Solutions, LLC.]

Respectfully submitted this 14<sup>th</sup> day of June 2007.

/s/ Dennis R. Bailey  
Dennis R. Bailey (4845-i71d)  
Bowdy J. Brown  
Bethany L. Bolger (6740-e60b)  
Attorneys for Plaintiff

Of counsel:  
RUSHTON, STAKELY, JOHNSTON  
& GARRETT, P.A.  
184 Commerce Street  
Post Office Box 270  
Montgomery, Alabama 36101-0270  
(334) 206-3234 (phone)  
(334) 262-0033 (fax)  
drb@rsjg.com (e-mail)  
bjb@rsjg.com (e-mail)  
blb@rsjg.com (e-mail)

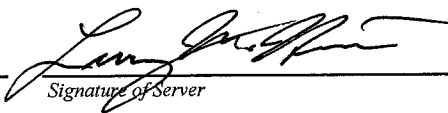
**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon the following counsel of record by placing a copy of same in the United States Mail, first class postage prepaid, on this the 14<sup>th</sup> day of June 2007.

Mr. David Martin  
Copeland, Franco, Screws & Gill  
Post Office Box 347  
Montgomery, Alabama 36101-0347

/s/ Dennis R. Bailey  
Of counsel

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	06/07/07
NAME OF SERVER (PRINT) Larry Michael Newton	TITLE	Runner
Check one box below to indicate appropriate method of service		
<input checked="" type="checkbox"/> Served personally upon the defendant. Place where served: <div style="margin-left: 40px;">David Martin's Office</div> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. <div style="margin-left: 40px;">Name of person with whom the summons and complaint were left:</div> <input type="checkbox"/> Returned unexecuted:  <input type="checkbox"/> Other (specify):		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;">           Executed on <u>06/11/07</u>  <small>Date</small> </div> <div style="width: 60%; text-align: center;">   <small>Signature of Server</small> </div> </div> <div style="text-align: center; margin-top: 20px;"> <u>184 Commerce St. Montgomery, AL</u>  <small>Address of Server</small> </div> <div style="text-align: center; margin-top: 50px;"> <div style="border: 1px solid black; padding: 10px; width: fit-content; margin: 0 auto;"> <p style="margin: 0; font-weight: bold; font-size: 1.2em;">RETURNED AND FILED</p> <p style="margin: 5px 0 0 0; font-weight: bold; font-size: 1.1em;">JUN 12 2007</p> <p style="margin: 0; font-weight: bold; font-size: 0.9em;">CLERK U. S. DISTRICT COURT MIDDLE DIST. OF ALA.</p> </div> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

MIDDLE

District of

ALABAMA

WHITNEY NATIONAL BANK

**ALIAS**

**SUMMONS IN A CIVIL ACTION**

V.

HIGHWAY SOLUTIONS, LLC; MICHAEL C.  
MARCATO and ANNE S. MARCATO

CASE NUMBER: 2:07-CV-415

TO: (Name and address of Defendant)

Highway Solutions, LLC  
c/o David Martin  
Copeland, Franco, Screws & Gill  
Post Office Box 347  
Montgomery, Alabama 36101-0347

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Dennis R. Bailey  
Bowdy J. Brown  
Rushton, Stakely, Johnston & Garrett  
Post Office Box 270  
Montgomery, Alabama 36101-0270

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

*Debra P. Hackett*

CLERK

(By) DEPUTY CLERK

DATE

6/11/07